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TO RUEHC/SECSTATE WASHDC 0030
INFO RUEHAC/AMEMBASSY ASUNCION 8816
RUEHSW/AMEMBASSY BERN 0208
RUEHBO/AMEMBASSY BOGOTA 6193
RUEHBR/AMEMBASSY BRASILIA 0156
RUEHBU/AMEMBASSY BUENOS AIRES 7377
RUEHBY/AMEMBASSY CANBERRA 0138
RUEHCV/AMEMBASSY CARACAS 4424
RUEHCP/AMEMBASSY COPENHAGEN 0385
RUEHPE/AMEMBASSY LIMA 4757
RUEHM/AMEMBASSY MONTEVIDEO 6151
RUEHOT/AMEMBASSY OTTAWA 0577
RUEHQ/AMEMBASSY QUITO 7041
RUEHSG/AMEMBASSY SANTIAGO 1805
RUEHRI/AMCONSUL RIO DE JANEIRO 1049
RUEHSO/AMCONSUL SAO PAULO 2361
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C O N F I D E N T I A L LA PAZ 000268

SIPDIS

IPE TIM MCGOWAN AND ROBERT WATTS

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TAGS: [ECON](#) [EINV](#) [ETRD](#) [KIPR](#) [BL](#)
SUBJECT: BOLIVIA: INPUT FOR 2009 SPECIAL 301 REVIEW

REF: A. SECSTATE 8410
[B.](#) 08 LA PAZ 2221
[C.](#) 08 LA PAZ 301

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 b,d

[¶](#)1. (C) Summary: Post recommends that Bolivia remain on the Special 301 Watch List in 2009. Piracy and counterfeiting are serious problems, existing intellectual property rights (IPR) legislation is weak, and enforcement is inadequate. Post believes prospects for improvement are slim, especially given the Morales's administration's inattention to IPR. Post does not recommend any stronger steps against Bolivia at this time, however, as such an action could encourage anti-American actions and damage ongoing efforts to educate the Bolivian public on IPR. End summary.

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IPR Violations Widespread
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[¶](#)2. (U) Piracy and counterfeiting are nearly universal. Bootleg CDs, DVDs, and other goods are sold on street corners and in stores across the country, and vendors operate with no fear of punishment. There are no legal sources of audio-visual materials in most of the country: in the capital of La Paz there is only one store that sells legal CDs. Drug counterfeiting, according to Pfizer executives, is an equally serious problem, with their domestic sales undercut by copycat products while ineffective or dangerous knockoffs damage corporate reputations.

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Legislation and Enforcement Weak
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[¶](#)3. (U) Bolivia's 1992 Copyright Law predates the international standards established under the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and falls short of obligations under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, both of which Bolivia has signed but not yet ratified. The Morales

administration has actively discouraged neighboring countries (particularly within the Andean Community--CAN) from entering into free trade agreements with the United States: one of Morales' stated objections to these agreements is the inclusion of IP protection. A former lawyer with the Bolivian IP Agency SENAPI (who attended a USPTO Global Intellectual Property Academy in May 2008) is now working on Morales' "trade agreement" team, where he is in charge of helping the Bolivian government avoid any inclusion of IPR protection.

¶4. (U) IPR enforcement efforts are inadequate, despite recognition of copyright infringement as a public offense in the 1992 Copyright Law and provisions for criminal prosecution of IPR violations in the 2001 Criminal Procedures Code. Criminal charges are rarely filed, and civil suits, if pursued, face long delays. Criminal penalties are limited to up to five years in jail, and civil penalties are restricted to the recovery of direct economic damages. Some Bolivian customs authorities continue to try to intercept counterfeit goods shipments at international borders, but the customs service lacks the human and financial resources needed to be effective.

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NEW CONSTITUTION WEAKENS PHARMA PROTECTION
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¶5. (U) Bolivia's new constitution, passed by referendum on January 25, 2009, emphasizes protection of traditional knowledge and cultural items. (Comment: The Bolivian National Intellectual Property Service is already focusing on a registry of traditional knowledge, to the detriment of industrial intellectual property claims. End comment.) The new constitution also states that "the right of access to medicines can not be restricted due to intellectual property rights..." The inclusion of the above text in the constitution will likely mean that international companies lose what little protection they have for their intellectual property in Bolivia.

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Comment
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¶6. (C) Post is pessimistic about the short-term prospects for greater recognition and protection of IP. Bolivia is the poorest country in Latin America, and populist president Evo Morales is not interested in protecting intellectual property, particularly property belonging to non-Bolivians. In 2008 the Embassy and USAID developed a public outreach campaign to improve knowledge of IP in Bolivia, however the Bolivian government's rhetoric against USAID prompted the diversion of funding to a more receptive country. While the IPR situation in Bolivia merits continued standing on the Watch List, Post recommends against any stronger action at this time. Placement of Bolivia on the Priority Watch List would have no positive practical result, and the effectiveness of any future IPR education and outreach would be damaged by Bolivian government outrage at a change in Special 301 status. For these reasons, Post recommends no/no change to Bolivia's Special 301 Watch List status. End comment.

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